

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD
(Through Virtual Mode)**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.230/Hyd/2024		
Assessment Year: 2013-14		
Maddikunta Sanjeeva Reddy, HNo11-222/1, Shanthinagar Colony, Patancheru, Hyderabad – 502319, Telangana. PAN : EIYPS0245H	Vs.	The Income Tax Officer, Ward – 1, Sangareddy.
(Appellant)		(Respondent)
Assessee by:		Shri Kali Kiran Kumar Kovvada, CA.
Revenue by:		Shri Ranjan Agarwala, Sr.AR
Date of hearing:		08.04.2024
Date of pronouncement:		08.04.2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2013-14 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.10.01.2024 invoking proceedings under section 147 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. The CIT(A) has overlooked the submissions in support of the grounds of appeal in Form 35 due to non-response to hearing notices.

I wish to draw your attention to the fact that the grounds of appeal submitted along with the application in Form 35 included relevant descriptions and supporting documentary evidence. Unfortunately, it appears that these were not appropriately considered by the CIT(A) as the order considers that supporting documentary evidences for the grounds have not been provide in the response to the hearing notice. when in fact they have already been provided as mentioned earlier in the Form 35. As a result the CIT(A) has passed the same order as the AO.

2. Technical proficiency of the appellant not considered as all communications received only through e-mail

I would like to highlight that I am not very technically proficient making it challenging for me to follow the email alerts sent by the department. Consequently, I added my son's email address as my registered email address to receive updates through him. However due to employment commitments, it is often difficult to reach him and as a result. I was not notified about the 2 hearing notices of appellate proceedings having the following particulars:

1. First Hearing Notice dated 03/04/2023 and response date being 18/04/2023.

2. Second Hearing Notice dated 01/01/2024 and response date being 08/01/2024.

Additionally, my son sometimes couldn't read the email alerts promptly due to the influx of other emails flooding his inbox. Consequently. by the time he realized that a notification regarding the appellate proceedings had been received, it was already too late, as the response window had lapsed.

3. The AO concluded the case on the basis of merits without informing and hearing the assessee and completed the assessment and made an addition of Rs.5,35,000/- to total income.

I was informed of this addition to my income only in the show cause notice dated 23/09/2021, there was no mention of this point upto the show cause notices dated 10/09/2021. Moreover. I was asked to appear for a hearing on the same on 23/09/2021, only within 10 days of receipt of that information which is not sufficient for me to prepare the relevant evidences to defend myself.

However, I presented a written representation on 20/09/2021 to explain the facts of the case and why the income shall not be added to my assessable income and instead of granting me more time to discuss the matter and come to conclusion, the AO has passed an order on 25/09/2021 which is less than a weeks' time only on the basis of merits and without any further information or hearing which is unfair to me and has deprived me of exercising my right of being heard to the proper extent to put forth my point.

4. The AO concluded and made addition of Rs.5,35,000/- to my total income without intimating or informing which is not acceptable.

5. The AO has concluded the case by penalizing me for the fact, deeds and lapses of my deceased father which is not acceptable.

6. The AO has concluded the case on the basis of merits treating the land in the subject case as capital asset and passed the orders accordingly applying capital gains tax which is not acceptable.

7. The AO has concluded the case without adjusting cost of acquisition of land and brought whole document value or consideration amount into capital gains bracket, which is not acceptable.

8. Misconstruction of the written representation:

As per my written representation dated 20/09/2021, I have specified the following points:

a) As per SCN dated 10-09-2021. my deceased father's income was not added and it was never ever discussed in any notices prior to that date.

b) To my understanding, my father is responsible for filing his own return and discharging his own tax liability. Therefore. this amount of Rs.5.35.000/- is not taxable in my hands.

c) The revenue has added entire taxable income of my father to my assessable income. without considering the fact that my father has 7 legal heirs.

As this particular capital gains belongs to my father, there are, other legal heirs to my father. I respectfully deny any tax liability arising out of this.

The Revenue has interpreted the above representation in the assessment order u/s 147 read with section 144 dated 25/09/2021 as follows:

"In response to the show cause letter Sri M. Sanjeeva Reddy vide his letter dated 20.09.2021 has requested to tax the income derived by Sri M. Narayana Reddy. which has fallen to his share as Late Sri M. Narayana Reddy is survived by 7 heirs."

"As seen from the Sale Deed Sri Maddikunta Narayana Reddy has five legal heirs, the assessee Sri Maddikunta Sanjeeva Reddy is one amongst them. In view of the same, 1/5th of the total sale consideration of Rs.26,7,500/-, amounting to Rs.5,35,500/- is brought to tax under Income from Long Term Capital Gains in the hands of the assessee for the assessment year under consideration."

It is clearly evident that the revenue has turned a deaf ear to my pleas of denying the tax liability with respect to this matter and also ignored the fact that my father has 7 legal heirs but has only consider 5 legal heirs based on the sale deed.

Moreover, the sale deed clearly specifies myself to be a consenting party, only to provide my consent for the sale of the property by my father and 2 sisters, as the property is an ancestral property. the sale of which requires consent of the members of the property. Hence the income arising from capital gains accruing to my deceased father shall not be added to my assessed income as I am not a beneficiary to the transaction.

I would also like to bring to your attention that the order specified that a notice under section 142(1) dated 06/09/2021 has been served along with the show cause notice under section 144, however the notice u/s 142(1) is not reflected on the portal.

9. Same property cannot be treated differently for different persons:

From reliable sources it is known, that the other 2 parties (i.e.. Mallaihgari Raja Mani (Padmamma) and Ramreddigari Satyamma) to the sale of the same property as my late father, had approached the CIT with the concern of revision of order for the levy of capital gain tax. They had claimed that the property was an agricultural land within the meaning of section 2(14) and hence capital gains tax was not applicable. The CIT passed a revision order in favour of the assessee and accordingly they did not pay any capital gains tax with respect to that property.

As it is the same property. one party cannot be granted the exemption from the levy of capital gains tax under the same act where the other party is being demanded to deposit the capital gains tax. The same property should have the same treatment under the same law irrespective of the different persons to the agreement."

3. The brief facts of the case are that assessee is an individual. On verification from ITBA it is noticed that the assessee has not filed return of income for the assessment year under consideration, admitting income from Long Term Capital Gains. Therefore, the Assessing Officer believed that the income of Rs.26,77,500/-, chargeable to tax in the hands of the assessee during the previous year relevant to the assessment year under consideration has escaped assessment within the meaning of Section 147 of the I.T.Act,1961. Accordingly, the Assessing Officer initiated proceedings U/s 147 of the I.T.Act,1961, by issuance of a Notice dated 18.03.2020, u/s 148 of the I.T.Act,1961, and the same has been duly served at the last known address of the assessee. In view of the non-compliance to the Notice issued U/s 148 of the I.T.Act, 1961, the Assessing Officer issued a detailed show cause letter dated 06.09.2021 along with a Notice U/s 142(1) of the I.T.Act,1961, wherein, the assessee has been required to show cause as to why the assessment should not be completed ex-parte as per Best Judgement as per the Provisions of Section 144 of the I.T.Act,1961.

3.1 In response to the said notice Sri M. Sanjeeva Reddy, assessee's son filed a letter along with a copy of Death Certificate of Sri M. Narayana Reddy, issued by Greater Hyderabad Municipal Corporation. After taking into consideration of the said reply, the Assessing Officer issued a detailed show cause letter dated 14.09.2021 along with a Notice U/s 142(1) of the I.T.Act,1961, to Sri Maddikunta Sanjeeva Reddy. Vide the said show cause letter the Assessing Officer proposed to bring to tax the entire sale consideration of Rs.26,77,500/-, received by Sri M. Narayana Reddy

in the hands of Sri M. Sanjeeva Reddy under Income from Long Term Capital Gains for the assessment year under consideration. The said show cause letter along with Notice U/s 142(1) of the I.T.Act,1961 has been duly served on the assessee. In response to the show cause letter Sri M. Sanjeeva Reddy vide his letter dated 20.09.2021 has requested to tax the income derived by Sri M. Narayana Reddy, which has fallen to his share as Late Sri M. Narayana Reddy is survived by 7 heirs.

3.2. As per the information available on record during the previous year relevant to the assessment year 2013-14, Sri Maddikunta Narayana Reddy along with two others sold immovable property being land admeasuring, Acres 3.18.75 Guntas out of their undivided 1/8th share in the property of total area of Ac.10.38 Guntas i.e., Acrs.1.22 Guntas in Survey No.226, Acres 1.10 Guntas in Survey No.227, Acres 2.12 Guntas in Survey No.228, Acres 3.14 Guntas in Survey No.217, Acres 1.10 Guntas in Survey No.218 and Acres 1.00 Guntas in Survey No.222/AA, total, admeasuring Acres 10.38 Guntas, situated at Kolluru Village, Ramachandrapuram Mandal, Medak District [presently Sangareddy District]. As per the sale deed in Document No.5554 of 2013 dated 15.03.2013, the total sale consideration mentioned is Rs.1,24,87,500/- and the assessee, Sri M. Narayana Reddy received an amount of Rs.26,77,500/- towards his share. As seen from the Sale Deed Sri Maddikunta Narayana Reddy has five legal heirs, the assessee Sri Maddikunta Sanjeeva Reddy is one amongst them. In view of the same, 1/5th of the total sale consideration of Rs.26,77,500/-, amounting to Rs.5,35,500/- was brought to tax under Income from Long Term

Capital Gains in the hands of the assessee for the assessment year under consideration. Thus, the Assessing Officer completed the assessment u/s 147 r.w.s. 144 of the Act.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, Id.AR has submitted that in the present case, the Assessing Officer had issued 148 notice to the deceased Mr. M. Narayana Reddy on 18.03.2020, which is to the following effect :

-left intentionally-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1, SANGAREDDY

To, MADDIKUNTA NARAYANA REDDY H NO 12-57 SHANTHI NAGAR, PATANCHERU MEDAK 502319, Andhra Pradesh India			
PAN: ASSPN1642B	AY: 2013-14	Dated 18/03/2020	DIN & Notice No. ITBA/AST/S/148/2019-20/1026760156(1)

Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2013-14 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961, I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT/CIT 2, HYDERABAD



Srinivasa Baru Pasumarthi
SRINIVASA BARU PASUMARTHI
WARD 1, SANGAREDDY

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

5.1. It was recorded by the Assessing Officer that notice was served on the deceased M. Narayana Reddy at the last given address. Since there was no compliance on the part of M. Narayana Reddy, another detailed show cause notice dt.10.09.2021 along with notice u/s 142 of the Act was issued to the assessee calling upon M. Narayana Reddy.

5.2. It is the case of the assessee before me that there was another parallel proceedings which was going on against the son namely, M Sanjeevareddy before the same Assessing Officer when the assessee M. Sanjeevareddy came to know about the pendency of the proceedings against the deceased father, the present assessee filed objection or reply before the Assessing Officer along with the death certificate of the deceased father mentioning the date of death 30.08.2014. The Assessing Officer in this regard mentioned the above noted facts in the assessment order at pages 2 and 3 to the following effect :

“2. On verification from ITBA it is noticed that the assessee, Sri Maddikunta Narayana Reddy has not filed return of income for the assessment year under consideration, admitting income from Long Term Capital Gains. Therefore, the Assessing Officer believed that the income of Rs.26,77,500/-, chargeable to tax in the hands of the assessee during the previous year relevant to the assessment year under consideration has escaped assessment within the meaning of Section 147 of the I.T.Act,1961. Accordingly, the Assessing Officer initiated proceedings U/s 147 of the I.T.Act,1961, by issue of a Notice dated 18.03.2020, U/s 148 of the I.T.Act,1961, and the same has been duly served at the last known address of the assessee.

3. In view of the non-compliance to the Notice issued U/s 148 of the I.T.Act,1961, the Assessing Officer issued a detailed show cause letter dated 06.09.2021 along with a Notice U/s 142(1) of the I.T.Act,1961, wherein, the assessee has been required to show cause as to

why the assessment should not be completed ex-parte as per Best Judgement as per the Provisions of Section 144 of the I.T.Act,1961. Vide the said show cause letter the assessee has also been informed that in the case of non-compliance the proceedings will be completed ex-parte taking into consideration, the information available on record and bringing to tax the amount of Rs.26,77,500/- under income from Long Term Capital Gains. The show cause letter along with Notice U/s 142(1) of the I.T.Act,1961 has been duly served on the assessee at his last known address. In response to the said notice Sri M. Sanjeeva Reddy, the assessee's son filed a letter along with a copy of Death Certificate of Sri M. Narayana Reddy, issued by Greater Hyderabad Municipal Corporation. After taking into consideration, the information filed and as Sri M. Narayana Reddy passed away, the Assessing Officer issued a detailed show cause letter dated 14.09.2021 along with a Notice U/s 142(1) of the I.T.Act,1961, to Sri Maddikunta Sanjeeva Reddy. Vide the said show cause letter the Assessing Officer proposed to bring to tax the entire sale consideration of Rs.26,77,500/-, received by Sri M. Narayana Reddy in the hands of Sri M. Sanjeeva Reddy under Income from Long Term Capital Gains for the assessment year under consideration. The said show cause letter along with Notice U/s 142(1) of the I.T.Act,1961 has been duly served on the assessee. In response to the show cause letter Sri M. Sanjeeva Reddy vide his letter dated 20.09.2021 has requested to tax the income derived by Sri M. Narayana Reddy, which has fallen to his share as Late Sri M. Narayana Reddy is survived by 7 heirs. After considering the information available on record and also the reply filed by the assessee, the assessment is completed as under.”

5.3. The Assessing Officer has not considered the reply of the assessee and not issued a fresh notice u/s 148 of the Act to the present assessee. The Assessing Officer had taxed 1/5th amount of long term capital gains in the hands of the assessee. In this regard, before me, the assessee has raised the following legal points for consideration :

1. That 148 notice issued on behalf of the deceased father was bad in law as there was no application of mind by the Assessing Officer.

2. It is also the contention of the assessee that when the above said fact came to the notice of the Assessing Officer, it was incumbent upon the Assessing Officer to issue a fresh notice u/s 148 and thereafter only, the present assessment can be completed against the assessee.

3. It was also pointed out by the learned Authorised Representative for the assessee that the assessee is one of the legal heirs of the deceased M. Narayana Reddy and there are in total 7 legal heirs and therefore, it is not appropriate on the part of the Assessing Officer to make addition in the hands of the assessee to the extent of 1/5th of the total sale of consideration i.e., Rs.26,77,500/-.

5.4 The Id.AR for the assessee further submitted that the Assessing Officer has failed to apply his mind and has wrongly issued a notice u/s 148 of the Act against the deceased person and therefore, there is a jurisdictional error and the order passed by the Assessing Officer and the appellate order passed by the Id.CIT(A) are liable to be quashed.

6. Per contra, the Id. DR has submitted that after the fact of death came to the notice of the Assessing Officer, a notice dt.14.09.2021 was issued against the present appellant and therefore, there is no technical breach on the part of the Assessing Officer. The Id.DR has also pointed out that at the time of appellate

proceedings, none appeared before the ld.CIT(A) and the above noted fact has not been brought to the notice of ld.CIT(A) and therefore, the ld.CIT(A) has rightly uphold the order passed by the Assessing Officer.

7. I have heard the rival contentions of the parties and perused the material available on record. Admittedly, the Assessing Officer in Paragraph 3 of his order recorded that M.Sanjeeva Reddy s/o. M. Narayana Reddy (deceased) had filed a letter along with death certificate issued by the GHMC, Hyderabad. However, despite the above said fact came to the notice of the Assessing Officer, the Assessing Officer has not issued show cause notice to all the legal heirs of the assessee and also failed to issue a fresh 148 notice against the legal heirs of the deceased M. Narayana Reddy. In my view, the law is fairly settled that once the Assessing Officer issued notice u/s 148 of the Act, then the Assessing Officer has to record the reasons to believe that the assessee income chargeable to tax has escaped from assessment Further, it is the duty of the Assessing Officer to ensure that no proceedings should be initiated against the deceased person or assessee.

7.1 In the present case, a notice under section 148 of the Act was issued against the deceased / dead person. Despite the fact of death came to the notice of Assessing Officer, no fresh notice under section 148 of the Act, as permissible in law was issued against the legal heirs within the period of limitation. In my view, there is a failure on the part of the Assessing Officer to issue notice u/s 148 against all the legal heirs and the notice, as it was only issued

against the deceased person. In view of the above, I find that there is jurisdictional error in issuing the notice under section 148 of the Act against the deceased person. Hence, I do not find any reason to uphold the addition made by the Assessing Officer, as everything was flowing from the notice under section 148 of the Act. Accordingly, the assessment framed on the basis of the defective notice issued against the deceased person is hereby quashed. Thus, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 8th April, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 8th April, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Maddikunta Sanjeeva Reddy, HNo11-222/1, Shanthinagar Colony, Patancheru, Hyderabad – 502319, Telangana.
2	The Income Tax Officer, Ward – 1, Sangareddy
3	Pr1.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order